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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,087	09/09/2003	Harri Heino	12808/25	9855
23838 7590 08/05/2008 KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005			EXAMINER ROBERT, EDUARDO C	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/05/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,087

Applicant(s)

HEINO ET AL.

Examiner

Alexis M. Wistermayer

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 2/12/04
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Thornes (US PGPub 2003/0236555).

Thornes discloses a method of securing a bone fracture comprising: locking the first end of a band to a surface of a bone with the first locking system (Fig 6 wherein 18 is pulled through and second end 10 of bone 26 is locked in place), passing a second end through side edges of a tissue (wherein tissue is interpreted as bone) (Fig 6, element 10 and band 18), tightening the band (by pulling on it in the direction of arrow near 20 in Fig 6), and a needle attached to the second end of the band (22).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hlavacek et al (US Pat 4792336) in view of Tormala et al (US PGPub 0058966).

Hlavacek et al. disclose a bioabsorbable band system comprising: a bioabsorbable band (Fig 1) that is solid (where solid is interpreted as anything that is not a gas or a liquid, as seen in Fig 1), molded (where molded is interpreted as something shaped to fit, as seen in Fig 4), that is at least partially oriented in a longitudinal direction (Fig 1), that has bioabsorbable fibers (Col 4 Lines 45-55), wherein a portion of these fibers are braided (Col 5 Lines 10-15), and having a needle (4 in Fig 1).

Hlavacek et al. does not disclose a bioabsorbable band system having a first and second bioabsorbable fastener.

Tormala et al. disclose a bioabsorbable fastener/pin (Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a first and second bioabsorbable fastener of Tormala in Hlavacek et al.'s system as an alternative means to prevent harm and encourage biocompatibility between the patient and the device.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hlavacek et al. in view of Tormala et al. as applied to claim 1 above, and further in view of Songer et al (US Pat 5536270).

Hlavacek et al. and Tormala et al. disclose the claimed invention as set forth in the rejections above. Hlavacek et al. and Tormala et al. do not disclose a band having a first end, a flexible body, a second end, or a tapered tip.

Songer et al. disclose a band/cable having a first end (70 in Fig 7), a second end (68), a flexible body (42) and a tapered tip (72). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the first and second end, a flexible body, and a tapered tip of Songer in Hlavacek et al. and Tormala et al.'s band as an equivalent means of ensuring flexibility and biocompatibility of the device when implanted in the patient.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hlavacek et al. and Tormala et al. as applied to claim 1 above, and further in view of Thornes (US PGPub 2003/0236555).

Hlavacek et al. and Tormala et al. disclose the claimed invention as set forth in the rejections above. Hlavacek et al. and Tormala et al. do not disclose first and second band ends comprising plates.

Thornes discloses plates/buttons on first and second band/suture ends (10 in Fig 2). It would have been obvious to one having ordinary skill in the art at the time the

invention was made to include the plates of Thornes in Hlavacek et al. and Tormala et al.'s device as an equivalent means of locking the band in place once it is implanted in the body.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilpela et al (US Pat 5415658).

Thornes discloses a similar invention as applied to claim 14 set forth in the rejection above.

Thornes does not teach drilling at least one hole through the first and second ends of the band and inserting a fastener into each respective end. Kilpela discloses using a screw driver (wherein drilling is interpreted as making a hole in the bone where the fastener is being screwed into by means of a screw driver, Col 5 Lines 10-20) to insert screws 44 into first and second band ends (Fig 5, band 72 has band ends where screws 44 are inserted, and screws 44 come into contact with 72 as shown). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the method of Kilpela et al. in Thornes's method to offer an alternative means of ensuring the fasteners stayed in place both in the band and the bone.

Conclusion

The prior art made of record and relied upon is considered pertinent to the applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexis M. Wistermayer whose telephone number is 571-270-3304. The examiner can normally be reached on Monday - Friday 8 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. M. W./
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733